

# Opening the Floodgates? The Supreme Court Creates Another Path to Challenging Agency Rules

## Client Alerts

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On the last day of the 2023–24 term, the Supreme Court issued its decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*—and held that a claim under the Administrative Procedure Act does not accrue for purposes of the six-year statute of limitations until the plaintiff is injured by final agency action.

## Background

Corner Post, Inc. is a convenience store and truck stop in North Dakota that opened in 2018. In 2021, Corner Post sued the Board of Governors of the Federal Reserve System under the Administrative Procedure Act (APA), challenging a Board rule adopted in 2011 that governs certain fees for debit-card transactions.

The Eighth Circuit held that Corner Post’s APA claims were barred by the statute of limitations. Those claims “first accrue[d]” when the Board issued the rule in 2011—even though Corner Post did not open for business until seven years later. As a result, Corner Post’s limitations period expired in 2017—a year before it opened for business.

The Supreme Court granted certiorari on a single question: Does a plaintiff’s APA claim “first accrue[]” under 28 U.S.C. § 2401(a) when an agency issues a rule—regardless of whether that rule injures the plaintiff on that date—or when the rule first causes a plaintiff to “suffer[] legal wrong” or be “adversely affected or aggrieved”?

## ***The Court’s Decision***

In yet another 6-3 decision, this time authored by Justice Barrett, the Court held that a claim accrues when the plaintiff has the right to assert it in court—and in the case of the APA, when the plaintiff is injured by final agency action.

The Court held that a right of action under 28 U.S.C. § 2401(a) (the provision that sets forth the default six-year statute of limitations applicable to suits against the United States) “accrues” when a

plaintiff has a complete and present cause of action. Because a plaintiff cannot sue and obtain relief until they suffer an injury from a final agency action, the Court held that the statute of limitations does not begin to run until that litigant is injured.

As a practical matter, this means that administrative agencies can be sued long after final agency rules take effect. Justice Jackson described the consequence of the Court's decision in her dissent: "After today, even the most well-settled agency regulations can be placed on the chopping block. And please take note: The fallout will not stop with new challenges to old rules involving the most contentious issues of today. Any established government regulation about any issue—say, workplace safety, toxic waste, or consumer protection—can now be attacked by any new regulated entity within six years of the entity's formation."

### **Impacts of recent Court decisions on agencies and executive departments**

This term's triumvirate of *Jarkesy*, *Loper Bright Enterprises*, and *Corner Post* is likely to result in a substantial increase in litigation against regulatory agencies, including challenges to federal regulations dating back decades.

As described in Jenner's June 28 client alert, several key arenas will be particularly impacted, including:

- *Energy and the environment*
- *Financial and economic oversight*
- *Communications*
- *Native American law*
- *New and evolving technologies, including artificial intelligence, social media, and crypto*

Clients facing any form of regulatory scrutiny would benefit from a holistic understanding of these decisions as applied to their unique circumstances.

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